

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JOSEPH PATRICK MOSHER,

#28225-078

v.

UNITED STATES OF AMERICA

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CIVIL NO. 4:20-CV-808-SDJ-AGD
CRIMINAL NO. 4:18-CR-218-SDJ-KJP

ORDER OF DISMISSAL

This civil action was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation (Dkt. #16)¹ with proposed findings of fact and recommendations for the disposition of the case. The Report and Recommendation of the Magistrate Judge has been presented for consideration. No objections were filed.

Although no objections were filed, the Court notes that there are two misstatements in the Report and Recommendation. The Report erroneously states, in two different places, that the undersigned admonished Movant at his sentencing hearing that appellate counsel would be appointed if he was determined to be indigent. (Dkt. #16 at 12, 15). This is inaccurate. Rather, the undersigned admonished Movant as follows: “If you are unable to pay the cost of an appeal, you may apply for leave to appeal *in forma pauperis*, which is without payment of fees.

¹When referring to documents in the instant § 2255 civil action, the Court will simply cite to the relevant docket number, i.e., (Dkt. #1). When referring to documents in the underlying criminal case, the Court will cite to the document as Crim. ECF, followed by the docket number, i.e., Crim. ECF (Dkt. #1).

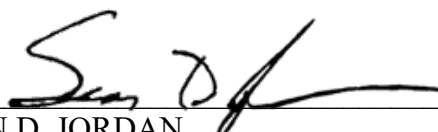
The clerk of the court will prepare and file a notice of appeal if you make the request.”
Crim. ECF (Dkt. #62 at 35).

Although the Report included the above-referenced misstatements concerning the appointment of counsel on appeal, the misstatements do not change the ultimate recommendation of the Magistrate Judge. Movant failed to show that Counsel’s performance was deficient. Further, Movant failed to show that, but for Counsel’s alleged deficient performance, the result of the proceeding would have been different.

The Court concludes that with the exception of the above-referenced misstatements concerning the appointment of counsel on appeal, the findings and conclusions of the Magistrate Judge are correct. Accordingly, with the noted corrections, the Court adopts the same as the findings and conclusions of the Court.

It is therefore **ORDERED** that the motion to vacate, set aside, or correct sentence is **DENIED** and the case is **DISMISSED WITH PREJUDICE**. A certificate of appealability is **DENIED**. It is further **ORDERED** that all motions by either party not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 5th day of February, 2024.


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE